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Paper No. 13
TEH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Gummi-Jager KG GmbH & Cie**

Serial No. 75/606,899

Robert W. Becker of Robert W. Becker & Associates for **Gummi-Jager KG GmbH & Cie.**

Lourdes D. Ayala, Trademark Examining Attorney, Law Office 106
(Mary Sparrow, Managing Attorney).

Before Hohein, Chapman and Holtzman, Administrative Trademark
Judges.

Opinion by Holtzman, Administrative Trademark Judge:

Gummi-Jager KG GmbH & Cie has filed an application to
register the mark shown below for "bowling pins and ninepins."¹

ARTEMIS®

¹ Serial No. 75/606,899, filed December 18, 1998, alleging a bona fide intention to use the mark in commerce.

Ser No. 75/606,899

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark so resembles the typed mark **ARTEMIS** in Registration No. 2,270,219 for "archery bows, archery arrows, and archery implements, namely, bow cases, arm guards, targets and quivers" as to be likely to cause confusion.²

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested.

Here, as in any likelihood of confusion analysis, we look to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), giving particular attention to the factors most relevant to the case at hand, including the similarity of the marks and the relatedness of the goods or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); and *In re Azteca Restaurant Enterprises Inc.*, 50 USPQ2d 1209 (TTAB 1999).

We agree with the Examining Attorney that the marks are identical in sound and commercial impression, and substantially similar in appearance. The dominant portion of applicant's mark is the word ARTEMIS. That same word is registrant's entire mark. Design elements such as that appearing in applicant's mark are

² Registration No. 2,270,219, issued August 17, 1999, based on Section 44 of the Trademark Act.

generally less important than the word portion of a mark in creating an impression. See *In re Appetito Provisions Co.*, 3 USPQ2d 1553 (TTAB 1987). This is particularly true where, as here, the design portion of applicant's mark is far less prominent than the word ARTEMIS, and therefore even less likely to be noticed or remembered by purchasers when seeing either applicant's or registrant's mark. Moreover, registrant could depict its mark ARTEMIS in the same block letter form as applicant uses, thereby rendering the words in the two marks visually identical. *Phillips Petroleum v. C.J. Webb*, 442 F.2d 1376, 170 USPQ 35, 36 (CCPA 1971); and *INB National Bank v. Metrohost*, 22 USPQ2d 1585, 1588 (TTAB 1992).

The marks may differ somewhat in meaning in relation to the respective goods. The word ARTEMIS, referring in mythology to a Greek goddess characterized as a huntress, is suggestive in relation to archery equipment, but it has no such connotation in relation to bowling pins and thus is essentially arbitrary for such goods. However, the meaning of ARTEMIS may not be generally known to the purchasing public and in any event the similarities in the two marks far outweigh any possible differences in meaning.

Applicant does not dispute the similarity of the marks but argues instead that there is no likelihood of confusion in view of the differences in the goods and the channels of trade as well

as customers for such goods. Applicant has submitted the declaration of Edward J. Baur, Manager, Programs and Production, of the American Bowling Congress, an institution that tests and certifies bowling lane equipment. Mr. Baur states that he has been involved with the bowling industry for over 27 years and that:

Bowling pins are sold to a very limited customer base, namely bowling centers, to which they are sold directly, either from the manufacturer itself or through manufacturing reps. Bowling pins are never sold through sporting goods stores, nor are they sold through Internet "shops." Bowling pins are marketed through unique channels of trade, and certainly not in the same manner as conventional sporting goods. Therefore, customers for bowling pins on the one hand, and archery equipment on the other hand, would never encounter such goods together.

The Examining Attorney, however, argues that the goods, while different, are related and are sold in the same channels of trade. The Examining Attorney has made of record five use-based third-party registrations covering both types of equipment and the results of an Internet search for websites containing the phrase "bowling and archery equipment." The Examining Attorney has highlighted approximately sixty of such listings and claims they demonstrate that

...the same people, schools, and organizations that feature bowling also feature archery and therefore, the same people who are active in one sport may be active in both sports.

The question, then, is whether the circumstances surrounding the marketing of the respective goods are such that purchasers

Ser No. 75/606,899

encountering them would, in view of the similarity of the marks, mistakenly believe that the goods emanate from the same source. See *Monsanto Co. v. Enviro-Chem Corp.*, 199 USPQ 590 (TTAB 1978) and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). Even if the marks are identical, if these conditions do not exist, the Board has held that confusion is not likely. See *In re Unilever Limited*, 222 USPQ 981 (TTAB 1984) and *In re Fesco, Inc.*, 219 USPQ 437 (TTAB 1983).

While archery equipment and bowling pins can both be broadly characterized as sports equipment, the mere fact that a term may be found which encompasses the respective products does not mean that customers will view the goods as related in the sense that they will assume that they emanate from or are associated with a common source. See, e.g., *General Electric Co. v. Graham Magnetics Inc.*, 197 USPQ 690 (TTAB 1977); and *Harvey Hubbell Inc. v. Tokyo Seimitsu Co., Ltd.*, 188 USPQ 517 (TTAB 1975). There is no per se rule that all sports equipment is related. See *In re Donnay International, S. A.*, 31 USPQ2d 1953 (TTAB 1994). More particularly, there is no inherent relationship between the goods at issue in this case and they are, in fact, quite different in character. Bowling pins, unlike bowling balls or bowling shoes, would seem to be more of a necessary part of the equipment for a bowling facility rather than separately purchased consumer items such as archery bows and arrows and targets.

Moreover, the five third-party registrations made of record by the Examining Attorney do not convince us that the respective goods are related. One of the identified registrations involves a house mark (WILSON) covering a broad range of sporting goods and is not necessarily reflective of the marketplace in general for such goods. Another registration does not include bowling pins in the list of goods. One other registration refers only to "bowling games," suggesting that the pins are sold only as part of the game as a whole. The remaining two registrations, although encompassing the goods at issue, are insufficient evidence to show that the respective goods are of a type which purchasers would typically expect to emanate from the same source.

Nonetheless, even if these goods would be considered to emanate from the same source, we have no persuasive evidence that the goods would be encountered in the same channels of trade by the same purchasers. In cases where an application and registration do not contain limitations describing a particular channel of trade or class of customer, the goods are assumed to travel in all normal channels of trade to all usual purchasers. See *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1492, 1 USPQ2d 1813, 1814-15 (Fed. Cir. 1987). It can be presumed that normal channels of trade for archery equipment, like other conventional sports equipment, would

include sports equipment wholesalers and sporting goods stores or other retail outlets. However, it is not common knowledge and the Examining Attorney has not shown that those are the normal trade channels for bowling pins. In fact, applicant has demonstrated that these goods are only sold directly either from the manufacturer itself or through manufacturing representatives. The Examining Attorney's printout of website listings referring to "bowling and archery equipment" does not show otherwise. A number of these websites seem to offer archery as well as bowling equipment generally but there is no indication that the bowling equipment refers to anything other than the typical equipment which is customarily purchased by consumers such as bowling balls, gloves or shoes. Only two of the sixty websites contain a specific reference to bowling pins and archery equipment but those excerpts are so abbreviated that it is impossible to determine the nature of the activity conducted over the website. It is not at all clear whether the goods are actually sold at those websites or whether the websites merely provide, for example, advertising for other companies or directories of manufacturers or suppliers of such equipment. A number of other websites highlighted by the Examining Attorney are simply links

to other search engines such as Excite, or duplicates of other listings.³

Nor is there evidence to show that the purchasers for the goods are the same. Applicant's evidence shows that bowling pins are only sold to a very limited customer base, namely bowling centers. The Examining Attorney's Internet evidence indicates that organizations such as schools and sports facilities provide both bowling and archery facilities. However, to the extent that schools, for example, are among the "usual" purchasers for both archery equipment and bowling alleys, there is no evidence that the school would do anything more than contract for the installation of the bowling alley. There is no evidence that the school would deal with separate companies for each component part of the facility such as the wood for the lanes, the seating for the players, the scorekeeping apparatus, the pin-setting machinery and finally the pins themselves.

It is true that likelihood of confusion may be based on confusion of ultimate users, bowlers in this case, as well as purchasers of the goods. However, there is nothing in the record to indicate that bowlers would be aware of the trademark on pins or ever even get close enough to the pins to see any trademark.

³ Still other websites refer to "bowling pins" as a type of target used on shooting ranges.

Ser No. 75/606,899

In view of the foregoing, we find that although the marks in this case are very similar, the record shows that the respective goods are not related or marketed under circumstances which would give rise to the mistaken belief that the goods emanate from a single source.

Decision: The refusal to register is reversed.